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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	91207899
Party	Defendant Yessenia Soffin
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Attachments	Opposition to Motion to Compel.pdf(187861 bytes)

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
The Trademark Trial and Appeal Board**

Serial No. 85/571,885,
For the mark: PARTY STAR POKER,

PartyGaming IA Limited,

Opposer,

vs.

Yessina Soffin,

Applicant.

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Opposition No. 91207899

OPPOSITION TO MOTION TO COMPEL

COMES NOW the Applicant, Yessina Soffin (hereinafter “Applicant”), by and through counsel, The Trademark Company, PLLC, and files the instant Opposition to the Motion to Compel filed by Opposer stating as follows:

STATEMENT OF FACTS

1. On or about June 13, 2013 Opposer submitted Opposer’s First Set of Requests for Admissions to Applicant, Opposer’s First Set of Interrogatories to Applicant and Opposer’s First Set of Requests for Production of Documents to Applicant.

2. Applicant’s responses to Opposer’s discovery, and specifically Opposer’s First Set of Requests for Admissions to Applicant, were due July 18, 2013.

3. During the morning of July 18, 2013 Applicant’s counsel called Opposer’s counsel to request an extension of time to respond to Opposer’s discovery to Applicant.

4. Not having received a response from Opposer’s counsel to the request for an extension and believing that it was under an obligation to provide responses to Opposer’s First Set of Requests for Admissions to Applicant on July 18, 2013, Applicant completed its

Applicant's Responses to Opposer's First Set of Requests for Admissions on July 18, 2013 at 1:37 pm and mailed the same to counsel for the Opposer via U.S. Mail.

5. Thereafter, at 2:12 pm on July 18, 2013, Opposer's counsel emailed Applicant's counsel reminding Applicant's counsel that a 60-day extension had previously been granted and that Applicant's responses were not due until September 16, 2013

6. Notwithstanding the pleasant exchange, continued cooperation between counsels' respective offices, and the extension that had been agreed to, Applicant did, in fact, respond to the subject admissions on July 18, 2013.

7. On or about Opposer filed a Motion for Summary Judgment on the basis that Applicant had not served its responses to Opposer's Discovery Requests, specifically Opposer's First Set of Requests for Admissions to Applicant, by the deadline of July 18, 2014.

8. On or about December 5, 2013 Applicant filed a response to Opposer's Motion for Summary Judgment stating that Applicant had served its responses to Opposer's First Set of Requests for Admissions by the deadline of July 18, 2014.

9. On or about December 16, 2013 Applicant filed an updated response to Opposer's Motion for Summary Judgment.

10. On or about February 10, 2014 the Board entered an Order denying Opposer's Motion for Summary Judgment based on the fact Applicant had served its responses to Opposer's Requests for Admissions by the deadline of July 18, 2014.

11. On or about February 28, 2014 counsel for Opposer sent counsel for Applicant correspondence confirming that full responses to Opposer's Discovery Requests were to be received by counsel for Opposer by March 14, 2014.

12. On or about March 14, 2014 Applicant served its Answers and Objections to Opposer's First Set of Interrogatories to Applicant and Opposer's First Set of Requests for Production of Documents to Applicant via e-mail and regular mail.

13. On or about April 15, 2014 Opposer filed the instant Motion to Compel Discovery.

Response

In response to the specifically enumerated document request subject of the Opposer's instant Motion to Compel, Applicant States as follows:

Document Request No. 1

All Documents and Things referring or relating to the dates of first use and first use in commerce in the United States by Applicant of Applicant's mark on or in connection with Applicant's services.

Response: Applicant has produced all responsive documents.

Document Request No. 2

All documents relating to Applicant's creation, consideration, design, development, selection, adoption, availability, and registration or attempts to register, both in the United States and abroad, of Applicant's mark.

Response: Applicant has produced all responsive documents.

Document Request No. 5

Representative samples of Documents and Things referring or relating to the dates of the most recent use in commerce in the United States by Applicant of Applicant's mark in connection with Applicant's services.

Response: Applicant has produced all responsive documents.

Document Request No. 6

All documents which disclose the length of time during which Applicant has offered goods or services under Applicant's mark in the U.S.

Response: Applicant has produced all responsive documents.

Document Request No. 20

Each and every search conducted by or on behalf of Applicant regarding use of Applicant's mark or other designations that include the terms PARTY and POKER, or derivations thereof.

Response: Applicant has produced all responsive documents.

Document Request No. 21

All Documents referring or relating to applications to register Applicant's mark, or any registrations to Applicant's mark, in the United States.

Response: Applicant has produced all responsive documents.

Document Request No. 24

All documents which disclose the channels of trade through which Applicant offers or intends to offer services under Applicant's mark.

Response: Applicant has produced all responsive documents.

Document Request No. 25

All documents, which disclose representative customers who have purchased Applicant's services offered under Applicant's mark including, but not limited to, reports regarding customer demographics.

Response: Applicant has produced all responsive documents.

Document Request No. 26

All documents which relate to Applicant's past, present or future marketing plans or strategies for goods or services offered under Applicant's mark, including but not limited to, dollar amount expenditures, target markets, channels of trade, and demographic studies.

Response: Applicant has produced all responsive documents.

Document Request No. 32

All Documents and Things related to any litigation, oppositions, cancellations, other trademark proceedings, civil litigations or criminal matters in which Applicant has been involved as a party or witness.

Response: Applicant has produced all responsive documents.

In response to the second set of specifically enumerated document request subject of the Opposer's instant Motion to Compel, Applicant States as follows:

Document Request No. 14

Documents from which Opposer can determine the amount of money that Applicant has expended or intends to expend on advertising Applicant's mark in the United States since Applicant first used Applicant's mark.

Response: Applicant restates and reiterates its initial response to as follows "Applicant objects to the instant request on the grounds that it is overly broad and burdensome. Subject to said objection, none."

Document Request No. 27

All Documents and Things from which the price of Applicant's services provided in connection with Applicant's mark, and the volume of sales of such services to date, can be determined.

Response: Applicant restates and reiterates its initial response to as follows "Applicant objects to the instant request on the grounds that it is overly broad and burdensome. Subject to said objection, none."

Document Request No. 38

Copies of complete federal and state tax filings for Applicant for the past five years.

Response: Applicant concedes to the instant request and will provide responsive documentation prior to trial, if any exists.

In response to the specifically enumerated interrogatory request subject of the Opposer's instant Motion to Compel, Applicant States as follows:

Interrogatory No. 10: Specify the date of first use in commerce in the United States of Applicant's mark in connection with each good or service to be identified in response to Interrogatory No. 9, the manner of such use or intended use, the geographic territory in which such use has occurred or is intended to occur, and the types or classes of customers who were exposed to such use, and identify all Documents referring or relating to such first use.

Answer: Applicant restates and reiterates its initial response to as follows "Applicant objects to the instant interrogatory on the grounds that it is overly broad. Subject to said objection, Applicant began use of Applicant's mark for Gambling services; Providing a web-based system and on-line portal for customers to participate in on-line gaming, operation and coordination of game tournaments, leagues and tours in October 2011. Applicant's Services have been offered on domain name partystarpoker.com. Consumers of Applicant's Services are adults who enjoy playing online poker."

Interrogatory No. 19: Specify the approximate gross revenue including, but not limited to, projected revenue generated by sales of Applicant's goods or services under Applicant's mark for each year since such sales began to the present.

Answer: Applicant restates and reiterates its initial response to as follows "Applicant objects to the instant interrogatory on the grounds that it is overly broad."

Interrogatory No. 22: Identify each person that Applicant expects to call as a witness in this proceeding, and state the subject matter on which such witness is expected to testify.

Answer: Applicant amends its response to this interrogatory to state “Applicant expects to call as a witness Will Jordan, managing director of Party Star Poker since 2010 through the present.”

Interrogatory No. 24: Specify whether Applicant intends to expand the goods/services offered under Applicant's mark to other goods or services, other channels of trade, or other geographic territories, and identify all documents relating or referring to such expansion.

Answer: Applicant amends its response to this interrogatory to state “Applicant has no plans for expansion of the goods and or services provided under its mark at this time.”

Interrogatory No. 25: Identity all licensees of Applicant's mark, and in doing so, describe the terms of the licensing arrangement and identify each product or service offered by the licensee under each arrangement.

Answer: Applicant concedes to the instant request and will provide its substantive response prior to trial, if any such licensing arrangement exists.

Interrogatory No. 27: Identify and describe all documents Applicant expects to use, introduce and/or rely upon during this opposition proceeding.

Answer: Applicant restates and reiterates its initial response to as follows “Applicant objects to the instant interrogatory on the grounds that it is overly broad and burdensome. Subject to said objection, see Applicant’s Document Responses to Opposer’s First Set of Request

Production of Documents.”

Interrogatory 28: Specify why Applicant took down the web site partystarpoker.com and identify all Persons with knowledge of the same.

Answer: Applicant restates and reiterates its initial response to as follows “Applicant was forced to shut down the website after his service provider received threatening emails from opposer.”

Verification of Interrogatories

Upon examination of the file Opposer is correct that Applicant’s answers to Opposer’s interrogatories were verified. The same will be done in the coming days.

WHEREFORE for good cause considered, the Applicant, by counsel, respectfully requests that the Board reject the Opposer’s Motion to Compel Discovery in the instant case.

Respectfully submitted this 5th day of May, 2014.

THE TRADEMARK COMPANY, PLLC

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The Trademark Trial and Appeal Board**

Serial No. 85/571,885,
For the mark: PARTY STAR POKER,

Party Gaming IA Limited,

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vs.

Yessina Soffin,

Applicant.

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Opposition No. 91207899

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I caused a copy of the foregoing this 5th day of May, 2014, to
be served, via first class mail, postage prepaid, upon:

Scott W. Johnston
Merchant & Gould, P.C.
80 South Eighth Street, Suite 3200
Minneapolis, MN 55402

/Matthew H. Swyers/
Matthew H. Swyers